

HOUSE BILL No. 1487

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-19; IC 34-30-2-64.5; IC 35-48-4.

Synopsis: Medical marijuana. Defines "qualifying patient" and permits a qualifying patient to use medical cannabis under certain circumstances. Requires the state department of health to adopt rules before July 1, 2016, concerning the use, distribution, cultivation, production, and testing of medical cannabis. Provides immunity for physicians who recommend the medical use of cannabis. Makes conforming amendments.

Effective: July 1, 2015.

Errington

January 14, 2015, read first time and referred to Committee on Rules and Legislative Procedures.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1487

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-19-3-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 31. (a) The following definitions apply throughout**
4 **this section:**
5 **(1) "Bona fide medical physician-patient relationship" means**
6 **a relationship between a physician and a patient that includes:**
7 **(A) a physical examination and review of medical history,**
8 **or a referral from a primary care practitioner;**
9 **(B) an explanation of the benefits and risks of medical use**
10 **of cannabis; and**
11 **(C) an ongoing expectation of care.**
12 **(2) "Cannabis" means any part of the plant genus cannabis,**
13 **including the seeds, the resin extracted from any part of the**
14 **plant, and any compound, manufacture, salt, derivative,**
15 **mixture, or preparation of the plant, its seeds, or its resin.**



(3) "Cannabis derived product" means a product other than whole plant cannabis that is manufactured from cannabis and is intended for use or consumption by humans through means including food stuffs, extracts, oils, tinctures, topicals, and suppositories.

(4) "Cardholder" means a person holding a valid medical cannabis production license or medical cannabis use license.

(5) "Dispensing facility" means a person that:

(A) holds a valid medical cannabis production license; and

(B) acquires and possesses cannabis and cannabis derived products for the purpose of sales, delivery, transport, transfer, and distribution to:

(i) cardholding qualifying patients;

(ii) cardholding personal caregivers;

(iii) other dispensing facilities; and

(iv) independent testing laboratories.

(6) "Independent testing laboratory" means a private and independent testing facility that:

(A) holds a valid medical cannabis production license; and

(B) tests cannabis or cannabis derived products that are to be sold by a medical cannabis establishment;

to identify the content of the cannabis or cannabis derived products, including constitutive elements such as cannabinoids, to detect the presence of any pesticides, bacteria, or other contaminants, and for other purposes determined by the state department.

(7) "Manufacturing facility" means a person that:

(A) holds a valid medical cannabis production license; and

(B) acquires, possesses, manufactures, and packages cannabis derived products for the purpose of delivery, transfer, transport, supply, or sale to:

(i) dispensing facilities;

(ii) other manufacturing facilities;

(iii) processing facilities; or

(iv) independent testing laboratories.

(8) "Medical cannabis agent" means an employee, staff volunteer, officer, or board member of a medical cannabis establishment.

(9) "Medical cannabis establishment" means a person holding a valid medical cannabis production license for the:

(A) cultivation;

(B) processing;



1 (C) manufacturing;

2 (D) testing; or

3 (E) dispensing;

4 of medical cannabis.

5 (10) "Medical cannabis production license" means a license
6 issued by the state department authorizing a person to
7 operate a medical cannabis establishment.

8 (11) "Medical cannabis use license" means a license issued by
9 the state department authorizing a qualifying patient or a
10 personal caregiver to acquire, possess, use, and deliver
11 cannabis for the medical benefit of a qualifying patient.

12 (12) "Medical use of cannabis" means the acquisition,
13 cultivation, possession, processing, manufacturing, transfer,
14 transportation, sale, distribution, dispensing, or
15 administration of cannabis or cannabis derived products for
16 the benefit of qualifying patients.

17 (13) "Nonresident card" means a card or other identification
18 that:

19 (A) is issued by another jurisdiction; and

20 (B) is substantially similar to a medical cannabis use
21 license.

22 (14) "Personal caregiver" means a person who has agreed to
23 assist with a qualifying patient's medical use of cannabis.

24 (15) "Physician" means a person having an unlimited license
25 to practice medicine under IC 25-22.5.

26 (16) "Processing facility" means a business that:

27 (A) holds a medical cannabis production license; and

28 (B) acquires, possesses, trims, inspects, or grades cannabis,
29 or places cannabis in bulk storage or retail containers for
30 the purpose of delivery, transfer, transport, supply, or
31 sales to:

32 (i) a dispensing facility;

33 (ii) a manufacturing facility;

34 (iii) another processing facility; or

35 (iv) an independent testing laboratory.

36 (17) "Qualifying medical condition" means:

37 (A) cancer;

38 (B) glaucoma;

39 (C) positive status for human immunodeficiency virus;

40 (D) acquired immune deficiency syndrome;

41 (E) hepatitis C;

42 (F) amyotrophic lateral sclerosis;



- 1 (G) Crohn's disease;
 2 (H) Alzheimer's disease;
 3 (I) nail-patella;
 4 (J) multiple sclerosis;
 5 (K) injury or disease to the spinal cord, spinal column, or
 6 vertebra;
 7 (L) myelomalacia;
 8 (M) celiac disease;
 9 (N) sickle cell anemia;
 10 (O) a chronic or debilitating disease or medical condition
 11 or the treatment for a chronic or debilitating disease or
 12 medical condition that produces:
 13 (i) cachexia or wasting syndrome;
 14 (ii) severe or chronic pain;
 15 (iii) severe or chronic nausea;
 16 (iv) seizures, including seizures that are characteristic of
 17 epilepsy; or
 18 (v) severe or persistent muscle spasms; or
 19 (P) any other disease, condition, or symptom that the state
 20 department determines by its rulemaking authority under
 21 IC 4-22-2 to be a debilitating medical condition.
- 22 (18) "Qualifying patient" means a person who has a written
 23 recommendation from a physician for the medical use of
 24 cannabis.
- 25 (19) "Restricted access area" means a location, not visible
 26 from a public right of way, where cannabis is cultivated. The
 27 term includes an open field, a greenhouse, in row cover, or in
 28 any other structure that secures the cannabis from access by
 29 unauthorized persons.
- 30 (20) "Written recommendation" means a document
 31 authorizing a qualifying patient's medical use of cannabis that
 32 is:
 33 (A) written on tamper resistant paper;
 34 (B) signed by a physician; and
 35 (C) made only in the course of a bona fide medical
 36 physician-patient relationship.
- 37 The written recommendation must include the qualifying
 38 medical condition.
- 39 (b) Before July 1, 2016, the state department shall adopt rules
 40 under IC 4-22-2 to do the following:
 41 (1) Determine who may serve as a personal caregiver for a
 42 qualifying patient. A personal caregiver may include:



- 1 (A) a health care provider; and
- 2 (B) an individual who is providing care to a qualifying
- 3 patient.
- 4 (2) Provide for the issuance of a:
 - 5 (A) medical cannabis use license to a qualifying patient or
 - 6 a personal caregiver; and
 - 7 (B) medical cannabis production license to a medical
 - 8 cannabis agent and a medical cannabis establishment.
- 9 (c) Before July 1, 2016, the state department shall adopt rules
 - 10 under IC 4-22-2 to establish an application process and a
 - 11 procedure for the issuance of a medical cannabis production
 - 12 license to an independent testing laboratory. The state department
 - 13 may issue a license under this subsection only if the independent
 - 14 testing laboratory is capable of accurately determining the
 - 15 following:
 - 16 (1) The concentration of tetrahydrocannabinol (THC) in a
 - 17 sample.
 - 18 (2) The presence and identification of mold or fungus in a
 - 19 sample.
 - 20 (3) The presence and concentration of pesticide and fertilizer
 - 21 in a sample.
 - 22 (d) Before July 1, 2016, the state department shall adopt rules
 - 23 under IC 4-22-2 to establish an application process and procedure
 - 24 for the issuance of a medical cannabis production license to a
 - 25 qualifying patient or a personal caregiver for the cultivation of
 - 26 cannabis for personal use. Rules adopted under this subsection
 - 27 must:
 - 28 (1) permit not more than ten (10) qualifying patients and
 - 29 personal caregivers to jointly cultivate cannabis for the
 - 30 personal use of one (1) or more qualifying patients;
 - 31 (2) limit the amount of cannabis that may be cultivated to not
 - 32 more than a ninety (90) day supply for each qualifying
 - 33 patient; and
 - 34 (3) require that cultivation and storage of cannabis be
 - 35 conducted in a restricted access area.
 - 36 (e) Before July 1, 2016, the state department shall adopt rules
 - 37 under IC 4-22-2 to establish an application process and procedure
 - 38 for the issuance of a medical cannabis production license to a
 - 39 medical cannabis agent. Rules adopted under this subsection must
 - 40 require that a medical cannabis establishment notify the state
 - 41 department not later than one (1) business day after a medical
 - 42 cannabis agent ceases to be associated with the medical cannabis



1 establishment.

2 (f) Before July 1, 2016, the state department shall adopt rules
3 under IC 4-22-2 to establish an application process and procedure
4 for the issuance of a medical cannabis production license to a
5 medical cannabis establishment. Rules adopted under this
6 subsection:

7 (1) may require a medical cannabis establishment to pay a
8 reasonable application and licensing fee;

9 (2) must require that the state department oversee and inspect
10 a medical cannabis establishment at regular intervals;

11 (3) shall prohibit a person who serves or served as a principal
12 officer or board member of a medical cannabis establishment
13 from serving as a principal officer or board member of
14 another medical cannabis establishment; and

15 (4) may limit the total number of medical cannabis
16 establishments in:

17 (A) Indiana; and

18 (B) any one (1) county.

19 (g) Before July 1, 2016, the state department shall adopt rules
20 under IC 4-22-2 to establish a procedure to revoke, for good cause
21 shown, a license issued under this section. Rules adopted under this
22 section:

23 (1) must provide a cardholder with notice and an opportunity
24 to be heard before the state board before permanent license
25 revocation;

26 (2) may provide for license suspension for a limited time on an
27 emergency ex parte basis; and

28 (3) may authorize the use of sanctions short of revocation
29 (including temporary suspension or a probationary period)
30 for a minor or technical violation of this chapter or the rules
31 adopted under this chapter.

32 (h) Before July 1, 2016, the state department shall adopt
33 reasonable rules under IC 4-22-2 concerning:

34 (1) product safety standards for the:

35 (A) cultivation;

36 (B) processing;

37 (C) manufacturing;

38 (D) labeling;

39 (E) testing; and

40 (F) distribution;

41 of cannabis; and

42 (2) oversight and enforcement of product safety standards



adopted under this subsection.

Rules adopted under this section may be based on the cannabis guidelines adopted by the American Herbal Products Association.

(i) Before July 1, 2016, the state department shall adopt rules under IC 4-22-2 concerning the issuance of a medical cannabis use license to the holder of a valid nonresident card.

(j) The state department may establish and collect reasonable fees for the issuance of a license under this section. The state department may establish different fees for different licenses. The fee may not exceed the cost of services provided, including the costs of oversight, inspection, and enforcement.

(k) Identifying information relating to a qualifying patient or a personal caregiver (including a person who seeks to be recognized as a qualifying patient or a personal caregiver) is confidential.

(l) A physician is immune from civil and criminal liability for:

(1) advising a qualifying patient about the risks and benefits of the medical use of cannabis; or

(2) providing a qualifying patient with a written recommendation based upon a full assessment of the qualifying patient's medical history and condition.

However, the immunity described in this subsection does not apply to a physician who commits gross negligence or engages in willful or wanton misconduct.

(m) The medical licensing board may not take any action against a physician who is immune under subsection (l) for performing an act described in subsection (l)(1) or (l)(2).

(n) Unless required by federal law or to obtain federal funding, a person may not discriminate in employment or housing based solely on a person's:

(1) status as a cardholder; or

(2) positive test for use of cannabis if the person is a cardholder.

However, this subsection does not prevent an employer from taking an adverse employment action against an employee who is impaired by the use of cannabis while on the employer's premises or while carrying out the employee's duties.

SECTION 2. IC 16-19-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) In addition to other fees provided by this title, the state department may establish and collect reasonable fees for specific services described under subsection (b) provided by the state department. The fees may not exceed the cost of services provided.



(b) Fees may be charged for the following services:

(1) Plan reviews conducted under rules adopted under IC 16-19-3-4(b)(13).

(2) Licensing of agricultural labor camps under IC 16-41-26.

(3) Services provided to persons other than governmental entities under rules adopted under IC 16-19-3-5.

(4) Services provided by the state health laboratory under IC 16-19-8.

(5) Services provided under IC 16-19-11-3.

(6) Services provided under IC 24-6 by the state metrology laboratory.

(7) Licensing under IC 16-19-3-31.

SECTION 3. IC 34-30-2-64.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 64.5. IC 16-19-3-31 (Concerning a physician and medical cannabis).**

SECTION 4. IC 35-48-4-8.3, AS AMENDED BY P.L.158-2013, SECTION 635, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8.3. (a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:

(1) introducing into the person's body a controlled substance;

(2) testing the strength, effectiveness, or purity of a controlled substance; or

(3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for possessing paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.

(c) It is a defense to an action or prosecution under this section that:

(1) the person who possesses the raw material, instrument, device, or other object is a cardholder (as defined in IC 16-19-3-31); and

(2) the raw material, instrument, device, or other object is for a purpose authorized by the person's license issued under IC 16-19-3-31.

SECTION 5. IC 35-48-4-10, AS AMENDED BY P.L.168-2014, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) A person who:



(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

marijuana, hash oil, hashish, or salvia, pure or adulterated; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

marijuana, hash oil, hashish, or salvia, pure or adulterated;

commits dealing in marijuana, hash oil, hashish, or salvia, a Class A misdemeanor, except as provided in subsections (b) through (d).

(b) A person may be convicted of an offense under subsection (a)(2) only if there is evidence in addition to the weight of the drug that the person intended to manufacture, finance the manufacture of, deliver, or finance the delivery of the drug.

(c) The offense is a Level 6 felony if:

(1) the person has a prior conviction for a drug offense and the amount of the drug involved is:

(A) less than thirty (30) grams of marijuana; or

(B) less than five (5) grams of hash oil, hashish, or salvia; or

(2) the amount of the drug involved is:

(A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or

(B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia.

(d) The offense is a Level 5 felony if:

(1) the person has a prior conviction for a drug dealing offense and the amount of the drug involved is:

(A) at least thirty (30) grams but less than ten (10) pounds of marijuana; or

(B) at least five (5) grams but less than three hundred (300) grams of hash oil, hashish, or salvia; or

(2) the:

(A) amount of the drug involved is:

(i) at least ten (10) pounds of marijuana; or

(ii) at least three hundred (300) grams of hash oil, hashish, or salvia; or

(B) offense involved a sale to a minor.

(e) It is a defense to a prosecution under this section for an



1 offense involving marijuana, hashish, or hash oil that:

2 (1) the person is a cardholder (as defined in IC 16-19-3-31);
3 and

4 (2) the conduct involving the marijuana, hashish, or hash oil
5 is authorized by the person's license issued under
6 IC 16-19-3-31.

7 SECTION 6. IC 35-48-4-11, AS AMENDED BY P.L.226-2014(ts),
8 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2015]: Sec. 11. (a) A person who:

10 (1) knowingly or intentionally possesses (pure or adulterated)
11 marijuana, hash oil, hashish, or salvia;

12 (2) knowingly or intentionally grows or cultivates marijuana; or

13 (3) knowing that marijuana is growing on the person's premises,
14 fails to destroy the marijuana plants;

15 commits possession of marijuana, hash oil, hashish, or salvia, a Class
16 B misdemeanor, except as provided in subsections (b) through (c).

17 (b) The offense described in subsection (a) is a Class A
18 misdemeanor if the person has a prior conviction for a drug offense.

19 (c) The offense described in subsection (a) is a Level 6 felony if:

20 (1) the person has a prior conviction for a drug offense; and

21 (2) the person possesses:

22 (A) at least thirty (30) grams of marijuana; or

23 (B) at least five (5) grams of hash oil, hashish, or salvia.

24 (d) It is a defense to a prosecution under this section for an
25 offense involving marijuana, hashish, or hash oil that:

26 (1) the person is a cardholder (as defined in IC 16-19-3-31);
27 and

28 (2) the conduct involving the marijuana, hashish, or hash oil
29 is authorized by the person's license issued under
30 IC 16-19-3-31.

